

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HABITAT FOR HUMANITY
INTERNATIONAL, INC.,

Plaintiff/Counter-Defendant,

v.

Case No.: 2:19-cv-456-FtM-38MRM

ROBERT DERRICK MORRIS,

Defendant/Counter-Plaintiff.

ORDER¹

Before the Court is Plaintiff/Counter-Defendant's Motion to Dismiss Defendant/Counter-Plaintiff's Amended Counterclaims With Prejudice ([Doc. 66](#)) filed on December 18, 2019, and Defendant/Counter-Plaintiff's Response in Opposition ([Doc. 69](#)) filed on January 13, 2020. The Court notes that the Third Amended Complaint is a shotgun pleading and will allow Plaintiff to amend before ruling on the merits of the dispute.

Habitat for Humanity International, Inc. (HFHI) sues one of its former employees, Robert Derrick Morris, for fraud, unjust enrichment, and breach of contract due to Morris' inappropriate use of HFHI resources which was discovered after Morris' separation pursuant to a severance agreement. Defendant filed a five-count Amended Counterclaim ([Doc. 63](#)) for race, color, and gender discrimination under Title VII, race discrimination

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under 42 U.S.C. § 1981, and age discrimination under the Age Discrimination in Employment Act.

When examining the Third Amended Complaint (Doc. 58), the Court observed that it incorporates each preceding paragraph into each count instead of limiting the scope of incorporation to that of the alleged facts. In so doing, Plaintiff has lodged what is known as a shotgun pleading. *Wagner v First Horizon Pharm. Corp.*, 464 F.3d 1273, 1279 (11th Cir. 2006). In general, shotgun pleadings “are those that incorporate every antecedent allegation by reference into each subsequent claim for relief or affirmative defense.” *Id.* The result is that the last count eventually constitutes a combination of the entire pleading. See *Weiland v. Palm Beach Cty. Sheriff’s Office*, 792 F.3d 1313 (11th Cir. 2015) (noting that a court, acting on its own initiative may *sua sponte* review a complaint and strike shotgun pleadings to replead).

[I]f tolerated, [shotgun pleadings] harm the court by impeding its ability to administer justice. The time a court spends managing litigation framed by shotgun pleadings should be devoted to other cases waiting to be heard. Wasting scarce judicial and parajudicial resources impedes the due administration of justice and, in a very real sense, amounts to obstruction of justice.

Byrne v. Nezhat, 261 F.3d 1075 (11th Cir. 2001) *abrogated on other grounds by Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008) (internal punctuation omitted). Consequently, the Eleventh Circuit has “roundly, repeatedly, and consistently condemn[ed]” them. *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979 (11th Cir. 2008). When faced with a shotgun complaint, the Eleventh Circuit encourages “courts to demand repleading.” *Bailey v. Janssen Pharm., Inc.*, 288 F. App’x 597, 603 (11th Cir. 2008) (citations omitted).

The Court will not break step with the Eleventh Circuit. Because Plaintiff has failed to identify the facts relevant to each claim, the Third Amended Complaint is deficient. Thus, it must be dismissed. Because “[a]n amended complaint supersedes a previously filed complaint,” the Court will deny the Motion to Dismiss the counterclaims as moot. *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1345 n.1 (11th Cir. 1999).

Accordingly, it is now

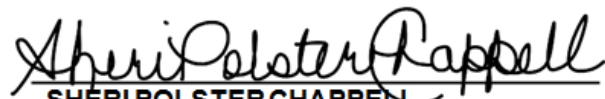
ORDERED:

(1) Plaintiff’s Third Amended Complaint ([Doc. 58](#)) is **dismissed without prejudice**.

(2) Plaintiff’s Motion to Dismiss Defendant’s Amended Counterclaims With Prejudice ([Doc. 66](#)) is **denied as moot**.

(3) Plaintiff may file a Fourth Amended Complaint on or before **January 31, 2020**. **Failure to do so will result in this case being dismissed with prejudice.**

DONE and **ORDERED** in Fort Myers, Florida this 16th day of January, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record